

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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SUSAN CHAMBERLAN, BRIAN)
CHAMPINE and HENRY FOK, on behalf)
of themselves and all others similarly)
situated, and on behalf of the general)
public,)
Plaintiffs,)
)
v.)
)
FORD MOTOR COMPANY, and DOES I)
through 20, inclusive,)
Defendants.)

)

RICHARD W. WIEKHAG
CLERK OF THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF APPEAL

Frank Giganti, a class member who has filed an Objection to the Settlement of the
above-entitled class action, hereby appeals the Court's ORDER GRANTING MOTION
OF THE PLAINTIFF CLASS FOR REASONABLE ATTORNEYS' FEES AND
EXPENSES, entered on October 7, 2005, to the United States Court of Appeals for the
Ninth Circuit.

A copy of said Order is attached hereto.

Respectfully submitted,

Frank Giganti
FRANK GIGANTI
6770 Chaffee Court
Apartment Q1
Brecksville, Ohio 44141
Appearing *Pro Se*

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1 LEVY, RAM & OLSON LLP
2 MICHAEL F. RAM (SBN 104805)
3 HEATHER M. MILLS (SBN 215293)
4 639 Front Street, Fourth Floor
San Francisco, California 94111-1913
Telephone: (415) 433-4949
Facsimile: (415) 433-7311

5 | Attorneys for Plaintiffs, Class Members and the General Public

6 [Additional counsel on signature page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SUSAN CHAMBERLAN, BRIAN) No. C 03 2628 CW
CHAMPINE and HENRY FOK, on behalf of)
themselves and all others similarly situated,)
and on behalf of the general public,)
) ORDER GRANTING MOTION OF THE
) PLAINTIFF CLASS FOR REASONABLE

Plaintiffs.

v.

FORD MOTOR COMPANY, and DOES 1 through 20, inclusive,

Defendants.

On October 7, 2005, this Court heard the Motion of the Plaintiff Class for Reasonable Attorneys' Fees and Expenses. Michael F. Ram, Richard T. Dorman, and Heather M. Mills, appeared for plaintiff. Michael Tubach, Brian Anderson, Randall Edwards and Steven Swaney appeared for defendants. The Court has read and considered the papers, including declarations and exhibits, and having considered all other pleadings and papers on file in this matter..

The Court finds and orders as follows:

1. Due and adequate notice was directed to class members, advising them of Class Counsel's intent to seek attorneys' fees and expenses, and of their right to object to the

1 settlement or opt out.

2 2. A full and fair opportunity was accorded to all class members to be heard with
3 respect to the motion for reasonable attorneys' fees and expenses.

4 3. The Court hereby awards \$4,500,000 in attorneys fees to Class Counsel. The
5 Court also awards litigation expenses in the amount of \$738,817.78 to Class Counsel.

6 4. The Court finds that the time Class Counsel spent on this case and their "lodestar"
7 fees for services are reasonable. The Court further finds that the following hourly rates claimed
8 by Class Counsel accurately reflect the hourly rates charged by private attorneys of comparable
9 experience, expertise, and reputation for comparable work: \$590 for Mr. Ram and his senior
10 partners, \$495 for junior partners, \$360 for associates, and \$175 for paralegals and law clerks;
11 \$650 for Mr. Dorman and his partners, \$475 for senior associates, \$375 for junior associates, and
12 \$175 for paralegals. Accordingly, the Court finds that the \$4,500,000 awarded in attorneys' fees
13 reflects the appropriate lodestar fees for services

14 5. The Court finds that the amount of fees and expenses awarded herein is fair and
15 reasonable to the class in light of the circumstances of this case, the result achieved, the effort
16 spent, the complexity of the issues presented, and the numerous risks faced by Class Counsel in
17 obtaining a successful result.

18 6. The Court finds based on the record submitted that the attorneys' fees awarded
19 are

20 justified in light of *Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977), enumerating the following
21 factors for determining the appropriateness of a lodestar multiplier: "(a) the novelty and
22 difficulty of the questions involved, (b) the skill displayed in presenting them, (c) the extent to
23 which the nature of the litigation precluded other employment by the attorneys, (d) the
24 contingent nature of the fee award."

25 (a) *The novelty and difficulty of the questions involved*

26 The issues were novel and difficult because Ford had already overcome prior class
27 actions on the same defect. Ford's defenses were significant. It claimed that its decision to
28

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1 implement an owner notification program primarily only for commercial vehicles was reasonable
 2 because there are driven differently. It argued that commercial vehicles had higher daily mileage
 3 accumulation, greater idling time that caused the manifold to fail; and it had an expert to support
 4 these claims. Ford further argued that Plaintiffs had to prove that any damage the class suffered
 5 from the plastic manifolds was actually caused by Ford's nondisclosures; and to do so, Plaintiffs
 6 would have to prove that Ford's non-disclosures regarding the propensity of the intake manifold
 7 to fail prematurely had caused the class member to purchase the vehicle. And it had experts who
 8 supported these claims as well. Ford also had a statute of limitations defense: it contended that
 9 anyone who had a manifold failure was on notice of a "defect" and therefore should have
 10 discovered he or she had a cause of action under the CLRA.

11 ***(b) The skill displayed in presenting the case***

12 Class Counsel have proven their expertise prosecuting this class action. Given the
 13 contentious nature of the litigation, the Court finds that the result achieved in this matter would
 14 have been unlikely if entrusted to counsel of lesser experience or capability.

15 ***(c) The extent to which the nature of the litigation precluded other
 16 employment by the attorneys***

17 Class Counsel devoted over 12,000 hours to this case. While Class Counsel handle many
 18 cases at a time, including class actions such as this one, their resources are limited. Of course,
 19 time devoted to achieving a positive result in this case could not also be devoted to pursuing
 20 other matters. See Ram Dec. ¶ 20. Dorman Dec. ¶ 12.

21 ***(d) The contingent nature of the fee award.***

22 Class Counsel undertook this case, which was relatively complex, and presented
 23 numerous and substantial risk, on a contingent fee and expenses basis.

24 7. In determining whether to use the 25% benchmark or some higher or lower
 25 percentage, the Ninth Circuit has considered various factors – specifically (a) whether
 26 exceptional results were achieved, (b) the degree of risk for Class Counsel, (c) whether there
 27 were benefits to the class beyond the immediate generation of a cash fund, (d) the range of fee
 28

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1 awards from common funds of comparable size, and (e) Class Counsel's investment in the case
2 and their foregoing of other work. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th
3 Cir. 2002). All of these factors support a percentage award in this case of 30 percent.
4 Nevertheless, the fees awarded here, \$4.5 million – less than five percent of the anticipated
5 payout, are reasonable.

6 (a) *The Results Obtained*

7 Class Counsel achieved exceptional results. The hard-won settlement provides
8 substantial settlement benefits to the class. Significantly, the settlement that Class Counsel
9 negotiated successfully shifted the burden of paying all administrative expenses, attorneys' fees
10 and expenses onto Ford, thus avoiding any reduction from class members' recoveries. This is
11 more favorable for class members than the typical case, where the class recovery is reduced by
12 paying administrative costs and the fees and expenses of Class Counsel.

13 (b) *Degree of Risk to Class Counsel*

14 As discussed above, Class Counsel undertook this case, which was relatively complex,
15 and presented numerous and substantial risk, on a contingent fee and expenses basis.

16 (c) *Benefits Beyond The Cash Settlement Fund.*

17 The results Class Counsel achieved go beyond the reimbursement that Ford must make to
18 class members for failures that have already occurred. The extended warranty period provides
19 that owners who have manifold failures within the seven-year period from the initial sale of the
20 vehicle will have their manifolds replaced for free by Ford. Further, the benefits of the
21 settlement can be transferred on the sale of a class vehicles to the new owner.

22 (d) *Range of Other Fee Awards in Cases of Comparable Size*

23 In *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002), the court found that in
24 cases where the common fund ranged from \$50-\$200 million, most awards were in the range of
25 10%-30% of the total fund, with a majority clustered in the 20%-30% range. *Id.* at 1050 n.4.
26 The requested percentage of the common fund is well below the range awarded in comparable
27 cases.

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(e) Investment of Class Counsel

Not only did this case present extreme risk, but the actual investment of \$738,817.78 in cash expenses and over 12,000 hours of time in pursuing these claims on behalf of the class, is substantial. Both Class Counsel firms have foregone income that could have been earned from working on other matters.

8. Ford shall deliver to Class Counsel payment of \$5,238,817.78 in attorneys' fees and expenses within fifteen days of the Effective Date of Settlement, in accordance with the Settlement Agreement.

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10/7/05

Claudia Wilken

**THE HONORABLE CLAUDIA WILKEN
U.S. DISTRICT COURT JUDGE**